

# **EXHIBIT 4**

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Citation: **2005 Mass. Super. LEXIS 471**

*2005 Mass. Super. LEXIS 471, \**

Betty Rivera v. University of Massachusetts Memorial Healthcare

Opinion No.: 90399, Docket Number: 2000-1466B

SUPERIOR COURT OF MASSACHUSETTS, AT WORCESTER

2005 Mass. Super. LEXIS 471

September 16, 2005, Decided

### CASE SUMMARY

**PROCEDURAL POSTURE:** Defendant hospital moved for partial summary judgment in plaintiff employee's personal injury action; the hospital sought to limit its potential liability to the statutory cap of \$ 20,000 for charitable organizations in Mass. Gen. Laws ch. 231, § 85K.

**OVERVIEW:** The employee claimed that she told the hospital's director about her ex-boyfriend's calls and asked him to lock the door to the reception area, which he did not do. The ex-boyfriend later entered the office in a drunken rage and stabbed the employee several times in the arms and stomach until a nurse intervened and managed to hold him down until police arrived. The employee claimed that the hospital had a contractual duty to provide her with a safe working environment and failed to do so, that it failed establish that it was a charity for purposes of § 85K, or that the tort committed against her occurred during an activity in direct furtherance of the hospital's charitable purpose. The court held that the hospital met its burden of showing that it was a charitable organization. The employee's duties directly advanced the hospital's purpose of providing health care to people. Consequently, the tort committed against the employee occurred in the course of the hospital's charitable purpose. As a result, the hospital was entitled to partial summary judgment limiting its potential liability to the statutory cap for charitable organizations.

**OUTCOME:** The motion for partial summary judgment was allowed.

**CORE TERMS:** charitable, summary judgment, charitable organization, cap, charitable purpose, partial, charity, charitable purposes, moving party, accomplish, immunity, genuine issue of material fact, burden of demonstrating, dominant purpose, party opposing, matter of law, triable issue, affirmatively, demonstrating, classed, snow, fails to meet, receptionist, duty

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Civil Procedure > [Summary Judgment](#) > [Summary Judgment Standard](#) 


**HN1** ⚡ Summary judgment is properly granted where there is no genuine issue of material fact, and a moving party is entitled to judgment as a matter of law. Mass R. Civ. P. 56 (c). [More Like This Headnote](#)

Civil Procedure > [Summary Judgment](#) > [Burdens of Production & Proof](#) 

**HN2** ⚡ A party moving for summary judgment bears the burden of demonstrating affirmatively the absence of a triable issue and entitlement to judgment as a matter of law. This burden may be met by demonstrating that the opposing party has no

reasonable expectation of proving an essential element of its case at trial. [More Like This Headnote](#)


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**HN3**  If a party moving for summary judgment establishes the absence of a triable issue, the party opposing the motion must respond and allege facts that would establish the existence of a genuine issue of material fact in order to defeat the motion. [More Like This Headnote](#)

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**HN4**  In reviewing a summary judgment record, a court must read the record in a manner most gratifying to the party opposing summary judgment, indulging all reasonable inferences in that party's favor. [More Like This Headnote](#)

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**HN5**  A party moving for summary judgment has the burden of affirmatively demonstrating that there is no genuine issue of fact on every relevant issue raised by the pleadings. [More Like This Headnote](#)


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[Torts](#) > [Real Property Torts](#) > [General Premises Liability](#) 


**HN6**  In a general premises liability context, under Mass. Gen. Laws ch. 231, § 85K, tort liability of a charitable organization is capped at \$ 20,000, unless the organization's activities are primarily commercial in character. [More Like This Headnote](#)

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[Torts](#) > [Negligence](#) > [Defenses](#)

**HN7**  The burden rests with the party relying on the charitable immunity cap to establish (1) that it is a charity, and (2) that any injury that it may be responsible for under principles of tort law occurred in the course of an activity designed to accomplish in a direct manner its charitable purposes. [More Like This Headnote](#)


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**HN8**  Hospitals are quintessentially the types of organizations that the Massachusetts legislature intended to benefit from the operation of the charitable immunity cap law in Mass. Gen. Laws ch. 231, § 85K. [More Like This Headnote](#)


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**HN9**  In a tort liability context, an institution will be classed as charitable if the dominant purpose of its work is for the public good and the work done for its members is but the means adopted for this purpose. But if the dominant purpose of its work is to benefit its members or a limited class of persons it will not be so classed, even though the public will derive an incidental benefit from such work. [More Like This Headnote](#)

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**HN10**  Neither the size of an organization, such as a hospital, nor simply the revenue-generating nature of the activity in question detracts from the organization's charitable status under Mass. Gen. Laws ch. 231, § 85K. [More Like This Headnote](#)

[Torts](#) > [Negligence](#) > [Defenses](#)

**HN11**  In a tort liability context, there is no requirement that a hospital provide free care to retain its charitable status. [More Like This Headnote](#)

[Evidence](#) > [Procedural Considerations](#) > [Burdens of Proof](#) 

[Torts](#) > [Negligence](#) > [Defenses](#)

Torts > Real Property Torts > General Premises Liability 

**HN12** In a general premises liability case, a hospital has the burden of showing that it is a charitable organization under Mass. Gen. Laws ch. 231, § 85K, and that the tort committed occurred in the course of the hospital's charitable purpose. The fact that a fee was charged for services is not sufficient to take the hospital out of the protection of § 85K. [More Like This Headnote](#)

Torts > Negligence > Defenses

**HN13** Under Mass. Gen. Laws ch. 231, § 85K, an organization shall not be liable for any activity carried on to accomplish directly the charitable purposes of such corporation. [More Like This Headnote](#)

Evidence > Procedural Considerations > Burdens of Proof 

Torts > Negligence > Defenses

**HN14** Once a defendant meets its burden of establishing its status as a charitable organization, the burden shifts to the plaintiff to show with admissible evidence the existence of a dispute as to material facts. [More Like This Headnote](#)

**JUDGES:** [\*1] Peter W. Agnes, Jr., Justice of the Superior Court.

**OPINIONBY:** Peter W. Agnes, Jr.

**OPINION: MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

The plaintiff, Betty Rivera, has brought this action against defendant UMass Memorial Health Care, Inc. ("UMHC"), arising out of a stabbing attack that occurred on UMHC's premises. Rivera alleges that UMHC negligently failed to provide adequate security for her personal safety, which was the direct and proximate cause of her injuries. UMHC now moves for partial summary judgment to limit its potential liability to the statutory cap of \$ 20,000 for charitable organizations, pursuant to G.L.c. 231, § 85K. For the following reasons, UMHC's motion for partial summary judgment is *ALLOWED*.

**BACKGROUND**

The essential facts are not in dispute. On the date in question, the plaintiff was a receptionist for Memorial Home Health Care ("Home Health"), a department of UMHC. On May 28, 1997, the plaintiff's ex-boyfriend Robert Perez ("Perez") called her repeatedly at Home Health. The plaintiff claims that she told the director of Home Health of the phone calls and asked him to lock the door to the [\*2] reception area, which he did not do. At 1:20 p.m., Perez entered the office, in a drunken rage, and stabbed the plaintiff several times in the arms and stomach until a nurse intervened and managed to hold him down until police arrived.

The plaintiff contends that UMHC had a contractual duty to provide her with a safe working environment and failed to do so. Further, the plaintiff argues that UMHC fails to meet its burden to establish that it and Home Health are charities for purposes of the statute, and that the tort committed occurred during an activity in direct furtherance of the organization's charitable purpose.

**DISCUSSION**

**HN1** Summary judgment is properly granted where there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. MassR.Civ.P. 56(c); *Nashua Corp. v. First State Ins. Co.*, 420 Mass.196, 202, 648 N.E.2d 1272 (1995); *Cassesso v.*

*Comm'r of Corr.*, 390 Mass.419, 422, 456 N.E.2d 1123 (1983); *Cmty. Nat'l Bank v. Dawes*, 369 Mass.550, 553, 340 N.E.2d 877 (1976). <sup>HN2</sup>✦ The moving party bears the burden of demonstrating affirmatively the absence of a triable issue and entitlement to judgment as a matter of law. *Pederson v. Time, Inc.*, 404 Mass.14, 16-17, 532 N.E.2d 1211 (1989) [\*3] . This burden may be met by demonstrating that the opposing party has no reasonable expectation of proving an essential element of its case at trial. *Flesner v. Technical Communications Corp.*, 410 Mass.805, 809, 575 N.E.2d 1107 (1991); *Kourouvacilis v. General Motors Corp.*, 410 Mass.706, 716, 575 N.E.2d 734 (1991).

<sup>HN3</sup>✦ "If the moving party establishes the absence of a triable issue, the party opposing the motion must respond and allege facts which would establish the existence of a genuine issue of material fact in order to defeat [the motion]." *Pederson*, 404 Mass.at 17. <sup>HN4</sup>✦ In reviewing the summary judgment record, this Court "must read the record in the manner most gratifying to the party opposing summary judgment, indulging all reasonable inferences in that party's favor." *Newport Plaza Assoc. v. Durfee Attleboro Bank*, 985 F.2d 640, 643 (1st Cir. 1993). <sup>HN5</sup>✦ As the party moving for summary judgment, the defendant has "the burden of affirmatively demonstrating that there is no genuine issue of fact on every relevant issue raised by the pleadings." *Mathers v. Midland-Ross Corp.*, 403 Mass.688, 690, 532 N.E.2d 46 (1989), quoting *Attorney Gen. v. Bailey*, 386 Mass.367, 371, 436 N.E.2d 139, cert. [\*4] denied, 459 U.S. 970, 74 L. Ed. 2d 282, 103 S. Ct. 301 (1982).

<sup>HN6</sup>✦ Under G.L.c. 231, § 85K, tort liability of a charitable organization is capped at \$ 20,000, unless the organization's activities are "primarily commercial in character." See *Ayash v. Dana-Farber Cancer Inst.*, 443 Mass. 367, 391, 822 N.E.2d 667 (2005). <sup>HN7</sup>✦ The burden rests with the party relying on the charitable immunity cap to establish (1) that it is a charity, and (2) that any injury that it may be responsible for under principles of tort law occurred in the course of an activity designed to accomplish in a direct manner its charitable purposes. See *Connors v. Northeast Hospital Corp.*, 439 Mass.469, 789 N.E.2d 129 (2003). <sup>HN8</sup>✦ Hospitals are quintessentially the types of organizations that the legislature intended to benefit from the operation of the charitable immunity cap law. *Connors, supra at 473* (citations omitted). As the court observed:

<sup>HN9</sup>✦ An institution will be classed as charitable if the dominant purpose of its work is for the public good and the work done for its members is but the means adopted for this purpose. But if the dominant purpose of its work is to benefit its members or a limited class of persons it will not be so [\*5] classed, even though the public will derive an incidental benefit from such work.

*Id. at 474* (citations and quotations omitted). In *Connors, supra*, moreover, the Supreme Judicial Court again considered the policy arguments that have been advanced over the years about the wisdom and fairness of the charitable immunity cap in Massachusetts and acknowledged that it was being asked to revise the doctrine and the application of G.L.c. 231, § 85K to hospitals. *Id. at 476-77*. However, the Supreme Judicial Court concluded that such an argument "is more appropriately addressed to the Legislature." *Id. at 477*. Under the analysis employed in *Connors, supra*, and required to be followed by this court, <sup>HN10</sup>✦ neither the size of an organization such as a hospital nor simply the revenue-generating nature of the activity in question detracts from the organization's charitable status under G.L.c. 231, § 85K. *Id.* <sup>HN11</sup>✦ "There is . . . no requirement that a hospital provide free care to retain its charitable status." *Id. at 475*.

**HN12** ¶ In a case such as this, the hospital has the burden of showing that it is a charitable organization [\*6] under G.L.c. 231, § 85K, and that the tort committed occurred in the course of the hospital's charitable purpose. G.L.c. 231, § 85K; *Harlow v. Chin*, 405 Mass.697, 716, 545 N.E.2d 602 (1989). "The fact that a fee was charged [for services] . . . is not sufficient to take the hospital out of the protection of G.L.c. 231, § 85K." *Id.* The plaintiffs argument that because the defendant generates a substantial amount of annual revenue its activities should be regarded as profitable, or primarily commercial, fails to consider another important dimension of the total picture. As pointed out in the Defendant's Reply to Plaintiff's Opposition at 2-3, despite substantial 1997 revenues, Memorial Healthcare, Inc. lost revenue in excess of six million dollars in the year in question, to say nothing of its total, long-term debt at the time.

Here, UMHC has met its burden of showing that it is a charitable organization for purposes of this statute. UMHC has submitted numerous exhibits which trace the history of its various predecessor entities and establish that when it was originally incorporated it was a charity and its continued [\*7] status as a charity, with the purpose of advancing the knowledge and practice of medicine, surgery, nursing, and health. Home Health, as a department within UMHC, falls within this category as well. Contrary to the plaintiff's assertion that Home Health is a subsidiary of UMHC, it is not, but rather, is actually part of the charitable corporation UMHC.

Further, UMHC has met its burden of demonstrating that the tort committed against the plaintiff occurred in the course of its charitable purpose. **HN13** ¶ Under G.L.c. 231, § 85K, an organization shall not be liable for "any activity carried on to accomplish directly the charitable purposes of such corporation . . ." G.L.c. 231, § 85K (emphasis added); *Goldberg v. Northeastern Univ.*, 60 Mass.App.Ct. 707, 711, 805 N.E.2d 517 (2004). In *Connors*, where the plaintiff was injured from a fall on accumulated snow in the hospital's parking lot, the court held that snow removal activities accomplish the hospital's charitable purpose. **Connors, 439 Mass.at 477-80.** Similarly, here the plaintiff was injured while performing her duties at the receptionist desk of Home Health, wherein such [\*8] duties directly advance UMHC's purpose of providing health care to people. This is not a case in which there is any basis in the record for the determination that Home Health's or UMHC's activities are primarily commercial i.e., "entirely disconnected" from its charitable purposes. *Goldberg*, 60 Mass.App.Ct. at 713. **HN14** ¶ Once the defendant meets its burden of establishing its status as a charitable organization, the burden shifts to the plaintiff to show with admissible evidence the existence of a dispute as to material facts. *Mathers*, 403 Mass.at 690, quoting *Godbout v. Cousens*, 396 Mass.254, 261, 485 N.E.2d 940 (1985). Nothing in the record demonstrates that UMHC or Home Health were not charitable organizations within the meaning of G.L.c. 231, § 85K, or that the plaintiff's tort injury did not occur during the course of an activity that directly accomplished UMHC's purpose. Because the plaintiff fails to meet her burden, partial summary judgment for UMHC pursuant to G.L.c. 231, § 85K is granted.

#### ORDER

For the above reasons, it is therefore **ORDERED** that the defendant's motion for partial summary judgment is **ALLOWED**. [\*9]

Peter W. Agnes, Jr.

Justice of the Superior Court

DATE: September 16, 2005



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## **EXHIBIT 5**





## Mission Statement

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### ***EBNHC***

To provide easily accessible, affordable, appropriate, high quality, personalized, coordinated primary care for all who live and work in East Boston and the surrounding communities without regard to age, income, insurance status, language, culture or social circumstances.

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EBNHC Confidential

## **EXHIBIT 6**

# The Commonwealth of Massachusetts

JOHN F.X. DAVOREN

*Secretary of the Commonwealth*

STATE HOUSE

BOSTON, MASS. 02133

## ARTICLES OF ORGANIZATION

(Under G.L. Ch. 180)

Incorporators

NAME

RESIDENCE

*Include given name in full in case of natural persons; in case of a corporation, give state of incorporation.*

See enclosed sheet - Incorporators

The above-named incorporator(s) do hereby associate (themselves) with the intention of forming a corporation under the provisions of General Laws, Chapter 180 and hereby state(s):

1. The name by which the corporation shall be known is:

East Boston Community Health Committee, Inc. ✓

2. The purposes for which the corporation is formed are as follows:

A. To assist in the raising of funds which will aid in the development, maintenance, and operation of a non-profit community health center exclusively for charitable and educational purposes.

B. To promote, cooperate and assist in the establishment, maintenance and support of a community health center, by promoting knowledge of the services provided therein and the encouragement of the use thereof by persons in the community.

See Page 2 - Continuation of Purposes

NOTE: If provisions for which the space provided under Articles 2, 3 and 4 is not sufficient, additions should be set out on continuation sheets to be numbered 2A, 2B, etc. Indicate under each Article where the provision is set out. Continuation sheets shall be on 8 1/2" x 11" paper and must have a left-hand margin 1 inch wide for binding. Only one side should be used.

3. If the corporation has more than one class of members, the designation of such classes, the manner of election or appointment, the duration of membership and the qualification and rights, including voting rights, of the members of each class, are as follows:—

Not applicable

4. Other lawful provisions, if any, for the conduct and regulation of the business and affairs of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or members, or of any class of members, are as follows:—

See Pages 4A, 4B, 4C, 4D, 4E and 4F attached.

INCORPORATORS

- ✓ Edith G. DeAngelis  
388 Meridian St.  
East Boston, Mass. 02128
- ✓ Anna DeFronzo  
21 Meridian St.  
East Boston, Mass. 02128
- ✓ Honorable Joseph V. Ferrino  
23 Bennington St.  
East Boston, Mass. 02128
- ✓ Anthony Sarge Gianetti  
152 Chelsea St.  
East Boston, Mass. 02128
- ✓ Sal Lombardo  
c/o Liberty Market  
Central Square  
East Boston, Mass. 02128
- ✓ Evelyn Morash  
62 Putnam St.  
East Boston, Mass. 02128
- ✓ Father Norbert DeAmato  
128 Gove St.  
East Boston, Mass. 02128
- ✓ Monsignor Mimie Pitaro  
17 Chestnut St.  
Peabody, Mass. 01960
- ✓ Ms. Lillian Tompkins  
210 Faywood Avenue  
East Boston, Mass. 02128
- ✓ Honorable Mario Umana  
18 Meridian St.  
East Boston, Mass. 02128

Page 2

Continuation of Purposes

C. To seek, maintain, develop and support the participation in any community health center and (community health center) and community health program of any school of medicine established and maintained under the laws of the Commonwealth of Massachusetts, or of any physician or physicians licensed to practice medicine in said Commonwealth.

D. To promote, develop and support personal hygiene among persons in the community, knowledge and use of medical services and hospital services generally, including their availability in the community, and sanitary conditions in the Community area, including the land, streets and buildings thereof; and to do all things permitted by law and not inconsistent with its charitable and educational purposes for the betterment of health in the community.

E. To seek, maintain, and develop the participation in and support for the Community Health Center, and in the program and activities thereof, of persons in the community.

F. To apply for, obtain, and contract for financial aid from the United States and any state and local government, or any agency thereof; seek, solicit, and obtain grants from any charitable trust, foundation or Corporation, or other public charity, or any private person or organization; and to borrow money from time to time for any of the objects or purposes of the Corporation, to issue notes or obligations of the Corporation therefor and to secure the same by lawful means.

G. To enter into any agreement or agreements with the United States, any state or local government, or any agency thereof, to carry out the provisions of any statute applicable to the activities of the Corporation. Upon execution, every such agreement shall be binding upon the Corporation, its successors and assigns for such period of time as shall be provided.

H. To make contributions, gifts, donations and loans (out of its annual net income or assets, or both) to or for the benefit of any community health center, any community health program, or any program conducted by any community health center or related to any community health corporation, trust, fund, foundation or government body which is operating, maintaining or supporting, or is contributing to the operation, maintenance, or support, of any community health center, any community health program, or any program conducted by any community health center or related to any community health program.

I. It shall not be a purpose of East Boston Community Health Committee, Incorporated to establish or maintain a health care facility which is subject to jurisdiction under Massachusetts General Laws, Chapter 155, section 2B.

J. It is intended that this corporation shall have only such purposes and be engaged in only such activities within the meaning of those terms as used in section 501(c) (3) of the Internal Revenue Code of 1954, as in force on the date hereof or as hereafter amended.



4. OTHER LAWFUL PROVISIONS

The corporation shall have the following powers in furtherance of its corporate purposes:

(a) The corporation shall have perpetual succession in its corporate name.

(b) The corporation may sue and be sued.

(c) The corporation may have a corporate seal which it may alter at pleasure.

(d) The corporation may elect or appoint directors, officers, employees and other agents, fix their compensation and define their duties and obligations.

(e) The corporation may purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with real or personal property, or any interests therein, wherever situated, in an unlimited amount.

(f) The corporation may solicit and receive contributions from any and all sources and may receive and hold, in trust or otherwise, funds received by gift or bequest;

(g) The corporation may sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage, pledge, encumber or create a security interest in, all or any of its property, or any interest therein, wherever situated.

(h) The corporation may purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, pledge, use and otherwise deal in and with, bonds and other obligations, shares, or other securities or interests issued by others, whether engaged in similar or different business, governmental, or other activities.

(i) The corporation may make contracts, give guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage, pledge or encumbrance of, or security interest in, all or any of its property or any interest therein, wherever situated.

CD-180-S 7-21

## The Commonwealth of Massachusetts

MICHAEL JOSEPH CONNOLLY

FEDERAL IDENTIFICATION

Secretary of State

NO. 23-742-5849

ONE ASHBURTON PLACE, BOSTON, MASS. 02108

## ARTICLES OF AMENDMENT

General Laws, Chapter 180, Section 7

This certificate must be submitted to the Secretary of the Commonwealth within sixty days after the date of the vote of members or stockholders adopting the amendment. The fee for filing this certificate is \$10.00 as prescribed by General Laws, Chapter 180, Section 11C(b). Make check payable to the Commonwealth of Massachusetts.

We, Evelyn Morash  
Helen McCormack

, President/~~XXXXXX~~ and  
, Clerk/~~XXXXXX~~

East Boston Community Health Committee, Inc.

(Name of Corporation)

Name  
Approved

located at 10 Gove Street, Boston

do hereby certify that the following amendment to the articles of organization of the corporation was duly adopted at a meeting held on October 15, 1936, by vote of fifteen members, being at least two thirds of its members legally qualified to vote in meetings of the corporation (insert the amendment to the articles of organization of the corporation here, or at least two thirds of the stockholders in the corporation):

That the name of the Corporation be changed to East Boston Neighborhood Health Center Corporation.

That East Boston Community Health Committee, Inc., a charitable corporation organized under Chapter 180 of the General Laws of the Commonwealth of Massachusetts become the sole member of the Corporation and that all other references to other members in the Articles be stricken.

Note: If the space provided under any article or item on this form is insufficient, additions shall be set forth on separate 8 1/2 x 11 sheets of paper leaving a left hand margin of at least 1 inch for binding. Additions to more than one article may be continued on a single sheet so long as each article requiring each such addition is clearly indicated.

P.C.

The foregoing amendment will become effective when these articles of amendment are filed in accordance with Chapter 180, Section 7 of the General Laws unless these articles specify, in accordance with the vote adopting the amendment, a later effective date not more than thirty days after such filing, in which event the amendment will become effective on such later date.

IN WITNESS WHEREOF AND UNDER THE PENALTIES OF PERJURY, we have hereto signed our names this  
Fifteenth day of October in the year 19<sup>86</sup>

Evelyn D. Morash Evelyn Morash, President/Vice President  
Helen M. P. McCormack Helen M. P. McCormack, Clerk/Assistant Clerk

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SECRETARY OF STATE  
CORPORATION DIVISION

CORPORATION DIVISION

THE COMMONWEALTH OF MASSACHUSETTS

ARTICLES OF AMENDMENT

(General Laws, Chapter 180, Section 7)

I hereby approve the within articles of amendment  
and, the filing fee in the amount of \$ 10.00  
having been paid, said articles are deemed to have been  
filed with me this 17th  
day of October, 1986

*Michael J. Connolly*

MICHAEL JOSEPH CONNOLLY

Secretary of State

TO BE FILLED IN BY CORPORATION

PHOTO COPY OF AMENDMENT TO BE SENT

TO:

Lorann Long, Esq.

Goodwin, Procter & Hoar

Exchange Place, Boston, MA 02109

Telephone .... 617/570-1000

Copy Mailed

A TRUE COPY ATTEST

*Michael J. Connolly*

MICHAEL J. CONNOLLY  
SECRETARY OF STATE

DATE 10/27/86 BY [Signature]

## Commonwealth of Massachusetts

MICHAEL J. CONNOLLY

Secretary of State

FEDERAL IDENTIFICATION

NO. 23-7425849

ONE ASHEURTON PLACE, BOSTON, MASS. 02108

## ARTICLES OF AMENDMENT

General Laws, Chapter 180, Section 7

This certificate must be submitted to the Secretary of the Commonwealth within sixty days after the date of the vote of members or stockholders adopting the amendment. The fee for filing this certificate is \$15.00 as prescribed by General Laws, Chapter 180, Section 11C(3). Make check payable to the Commonwealth of Massachusetts.

We, Helen M.P. McCormack

Ralph Vertuccio

, President/Chairman, and

Assistant Clerk/Secretary of

East Boston Neighborhood Health Center Corporation

(Name of Corporation)

located at 10 Gove Street, East Boston, Massachusetts

do hereby certify that the following amendment to the articles of organization of the corporation was duly adopted at a meeting held on September 23, 1992, by vote of its sole member, being at least two thirds of its members legally qualified to vote in meetings of the corporation for the purpose of amending the articles of organization of the corporation.

1. That all references to members in the Articles of Organization be stricken.
2. That the Corporation shall have no members. No person now or hereafter designated by the Corporation as a "member" for any purpose shall be or be deemed to be a member for purposes of the articles of organization or for purposes of Massachusetts General Laws Chapter 180, as amended, or any other law, rule or regulation. Any action or vote required or permitted by said Chapter 180 or any other law, rule or regulation to be taken by members shall be taken by action or vote of the same percentage of the directors of the Corporation.

Note: If the space provided under any article or item on this form is insufficient, additions shall be set forth on separate 8 1/2 x 11 sheets of paper leaving a left hand margin of at least 1 inch for binding. Additions to more than one article may be continued on a single sheet so long as each article requiring such addition is clearly indicated.

Section #	
Corporation #	
Vendor #	
File #	
State #	

7-26-1992

The foregoing amendment will become effective when three copies of amendment are filed in accordance with Chapter 100, Section 7 of the General Laws unless those articles specify, in accordance with the vote adopting the amendment, a later effective date not more than thirty days after such filing, in which event the amendment will become effective on such later date.

IN WITNESS WHEREOF AND UNDER THE PENALTIES OF PERJURY, we have hereto signed our names this 30th day of September, 1992

John M. McCormack

President

Ralph P. Vetrone

Assistant

Clerk/Assistant Clerk

31823

411558

RECEIVED  
NOTARY PUBLIC  
1992 DEC 17 11:11:10  
STATE DIVISION

THE COMMONWEALTH OF MASSACHUSETTS

ARTICLES OF AMENDMENT  
(General Laws, Chapter 103, Section 7)

I hereby approve the within articles of amendment  
and the filing fee in the amount of \$ 15 -  
having been paid, said articles are deemed to have been  
filed with me this 17th day of NOVEMBER, 1992

*Michael J. Connolly*

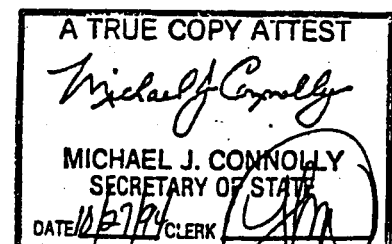
MICHAEL J. CONNOLLY

Secretary of State

TO BE FILLED IN BY CORPORATION  
PHOTO COPY OF AMENDMENT TO BE SENT

TO:  
John C. Slater III, Esquire  
Sherin and Lodgen  
100 Summer Street, Boston, MA 02110  
Telephone (617) 426-5720

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(j) The corporation may lend money, invest and re-invest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(k) The corporation may do business, carry on its operations, and have offices and exercise the powers granted by Massachusetts General Laws, Chapter 180, as now in force or as hereafter amended, in any jurisdiction within or without the United States, although the corporation shall not be operated for the primary purpose of carrying on for profit a trade or business unrelated to its tax exempt purposes.

(l) Unless the corporation is entitled to exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code in which case it shall make no contribution for other than religious, charitable, scientific, literary or educational purposes, the corporation may make donations in such amounts as the members or directors shall determine, irrespective of corporate benefit, for the public welfare or for community fund, hospital, charitable, religious, educational, scientific, civic, or similar purposes, and in time of war or other national emergency in aid thereof.

(m) The corporation may be an incorporator of other corporations of any type or kind.

(n) The corporation may be a partner in any business enterprise which it would have power to conduct by itself.

(o) The directors may make, amend or repeal the by-laws in whole or in part, except with respect to any provision thereof which by law or the by-laws requires action by the members.

(p) Meetings of the members may be held anywhere in the United States.

(q) The corporation shall, to the extent legally permissible and only to the extent that the status of the corporation as an organization exempt under Section 501(c)(3) of the Internal Revenue Code is not affected thereby, indemnify each of its directors, officers, employees and other agents, (including persons who serve at its request as directors, officers, employees or other agents of another organization in which it has an interest) against all liabilities and expenses, including amounts paid in satisfaction of judgments, in compromise or as fines and penalties, and counsel fees, reasonably incurred by him in connection with the defense or disposition of any action, suit or other proceeding, whether civil or criminal, in which he may be involved or with which he may be threatened, while in office or thereafter, by reason of his being or having been such a director, officer, employee or agent, except with respect to any matter as to which he shall have been adjudicated in any proceeding not to have acted in good faith in the reasonable belief that his action was in the best interests of the corporation; provided, however, that as to any matter disposed of by a compromise payment by such director, officer, employee or agent, pursuant to a consent decree or otherwise, no indemnification either for said payment or for any other expenses shall be provided unless such compromise shall be approved as in the best interest of the corporation, after notice that it involves such indemnification; (a) by a disinterested majority of the directors then in office; or (b) by a majority of the disinterested directors then in office, provided that there has been obtained an opinion in writing of independent legal counsel to the effect that such director, officer, employee or agent appears to have acted in good faith in the reasonable belief that his action was in the best interests of the corporation; or (c) by a majority of the disinterested members entitled to vote, voting as a single class. Expenses including counsel fees, reasonably incurred by any such director, officer, trustee, employee or agent in connection with the defense or disposition of any such action, suit or other proceeding may be paid from time to time by the corporation in advance of the final disposition thereof upon receipt of

an undertaking by such individual to repay the amounts so paid to the corporation if he shall be adjudicated to be not entitled to indemnification under Massachusetts General Laws, Chapter 180, Section 6. The right of indemnification hereby provided shall not be exclusive of or affect any other rights to which any director officer, employee or agent may be entitled. Nothing contained herein shall affect any rights to indemnification to which corporate personnel may be entitled by contract or otherwise under law. As used in this paragraph, the terms "directors," "officer," "employee," and "agent" include their respective heirs, executors and administrators, and an "interested" director is one against whom in such capacity the proceedings in question or another proceeding on the same or similar grounds is then pending.

(r) No person shall be disqualified from holding any office by reason of any interest. In the absence of fraud, any director, officer, or member of this corporation individually or any individual having any interest in any concern in which any interest, may be a part to, or may be pecuniarily or otherwise interested in, any contract, transaction, or other act of this corporation, and

- (1) such contract, transaction, or act shall not be in any way invalidated or otherwise affected by that fact;
- (2) no such director, officer, member, or individual shall be liable to account to this corporation for any profit or benefit realized through any such contract, transaction, or act; and
- (3) any such director of this corporation may be counted in determining the existence of a quorum at any meeting of the directors or of any committee thereof which shall authorize any such contract, transaction, or act, and may vote to authorize the same;

the term "interest" including personal interest and interest as a director, officer, stockholder, shareholder, trustee, member or beneficiary of any concern; the term "concern" meaning any corporation, association, trust, partnership, firm, person, or other entity other than this corporation.

Continuation sheet - Incorporators Signatures

/s/ Edith G. DeAngelis  
Edith G. DeAngelis

/s/ Anna DeFranzo  
Anna DeFranzo

/s/ Honorable Joseph V. Ferrino  
Honorable Joseph V. Ferrino

/s/ Anthony Sarge Giannetti  
Anthony Sarge Giannetti

/s/ Sal Lombardo  
Sal Lombardo

/s/ Evelyn Morash  
Evelyn Morash

/s/ Father Norbert DeAmato  
Father Norbert DeAmato

/s/ Monsignor Mimie Pitaro  
Monsignor Mimie Pitaro

(s) No part of the assets of the corporation and no part of any net earnings of the corporation shall be divided among or inure to the benefit of any officer or director of the corporation or any private individual or be appropriated for any purposes other than the purposes of the corporation as herein set forth; and no substantial part of the activities of the corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the corporation shall not participate in or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office. It is intended that the corporation shall be entitled to exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code and shall not be a private foundation under Section 509(a) of the Internal Revenue Code.

(t) Upon the liquidation or dissolution of the corporation, after payment of all of the liabilities of the corporation or due provision therefor, all of the assets of the corporation shall be disposed of to one or more organizations exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code.

(u) In the event that the corporation is a private foundation as that term is defined in Section 509 of the Internal Revenue Code, then notwithstanding any other provisions of the articles of organization or the by-laws of the corporation, the following provisions shall apply:

The directors shall distribute the income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code.

The directors shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code; nor retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code; nor make any investments in such manner as to incur tax liability under Section 4944 of the Internal Revenue Code; nor make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code.

(v) The corporation may have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed; provided that no such power shall be exercised in a manner inconsistent with Massachusetts General Laws, Chapter 180 or any other chapter of the General Laws of the Commonwealth or Section 501(c)(3) of the Internal Revenue Code.

(w) All references herein to the Internal Revenue Code shall be deemed to refer to the Internal Revenue Code of 1954, as now in force or hereafter amended.

Case 1:04-cv-10643-LTS Document 23-3 Filed 11/14/2005 Page 29 of 34  
5. By-laws of the corporation have been duly adopted and the initial directors, president, treasurer and clerk or other presiding recording officers whose names are set below, have been duly elected.

6. The effective date of organization of the corporation shall be the date of filing with the Secretary of the Commonwealth or if later date is desired, specify date, (not more than 30 days after date of filing.)
7. The following information shall not for any purpose be treated as a permanent part of the Articles of Organization of the corporation.

a. The post office address of the initial principal office of the corporation in Massachusetts is:

79 Paris Street, East Boston, Massachusetts 02128

b. The name, residence, and post office address of each of the initial directors and following officers of the corporation are as follows:

NAME	RESIDENCE	POST OFFICE ADDRESS
President: Patricia Buonopane	81 Gladstone St., East Boston,	MA 02128
Treasurer: Carmella Magoon	83 Eutaw St., East Boston,	MA 02128
Clerk: Edward Gerard Jager	15 Chester St., Cambridge,	MA 02140

Directors: (or officers having the powers of directors)

Patricia Buonopane

Carmella Magoon

Theresa McNamara 40 Gove Street, East Boston, MA

c. The date initially adopted on which the corporation's fiscal year ends is: August 30

d. The date initially fixed in the by-laws for the annual meeting of members of the corporation is:  
third Wednesday in September. If that day is a legal holiday,  
then the next weekday that is not a legal holiday.

e. The name and business address of the resident agent, if any, of the corporation is:

IN WITNESS WHEREOF and under the penalties of perjury the above-named INCORPORATOR(S) sign(s) these Articles of Organization this 26th day of September 1974

Ms. Lillian Tompkins

1st Ms. Lillian Tompkins

Honorable Mario Umana

1st Mario Umana

The signature of each incorporator which is not a natural person must be by an individual who shall show the capacity in which he acts and by signing shall represent under the penalties of perjury that he is duly authorized



RECEIVED

SEP 20 1974

CORPORATION DIVISION

SECRETARY'S OFFICE THE COMMONWEALTH OF MASSACHUSETTS

ARTICLES OF ORGANIZATION  
GENERAL LAWS, CHAPTER 180

I hereby certify that, upon an examination of the within-written articles of organization, duly submitted to me, it appears that the provisions of the General Laws relative to the organization of corporations have been complied with, and I hereby approve said articles; and the filing fee in the amount of \$30.00 having been paid, said articles are deemed to have been filed with me this

26<sup>th</sup> day

1974

Effective date

*John F. X. Davoren*  
JOHN F.X. DAVOREN  
Secretary of the Commonwealth

TO BE FILLED IN BY CORPORATION  
CHARTER TO BE SENT TO

Edward Gerard Jager

542-5550

177 Milk Street

Boston, Massachusetts 02109

FILING FEE \$30.00

CHARTER MAILED  
DELIVERED

9-27-1974 MA-I

A TRUE COPY ATTEST

*Michael J. Connolly*MICHAEL J. CONNOLLY  
SECRETARY OF STATEDATE 10/27/74 CLERK *(Signature)*

## The Commonwealth of Massachusetts

MICHAEL J. CONTIOLLY

FEDERAL IDENTIFICATION

Secretary of State

NO. 23-7425849

ONE ASHBURTON PLACE, BOSTON, MASS. 02108

## ARTICLES OF AMENDMENT

General Laws, Chapter 180, Section 7

This certificate must be submitted to the Secretary of the Commonwealth within sixty days after the date of the vote of members or stockholders adopting the amendment. The fee for filing this certificate is \$15.00 as prescribed by General Laws, Chapter 180, Section 11C(2). Make check payable to the Commonwealth of Massachusetts.

We,

Maria Torres, ~~President~~ and  
Christopher Morton, ~~Clerk~~ of

East Boston Neighborhood Health Center Corporation

(Name of Corporation)

located at 10 Gove Street, East Boston, Massachusetts

do hereby certify that the following amendment to the articles of organization of the corporation was duly adopted:

by written consent dated January 19, 1994, ~~any~~ <sup>by</sup> ~~vote~~ of all of the ~~members~~  
directors, ~~being~~ <sup>being</sup> at least two thirds of its ~~members~~ <sup>directors</sup> legally qualified to vote in meetings of the corporation  
(or, in the case of a corporation having capital stock, by the holders of at least two thirds of the capital stock having the right to vote thereon):

To delete Article 2.I. thereof which provides:

"It shall not be a purpose of East Boston Community Health Committee, Incorporated to establish and maintain a health care facility which is subject to jurisdiction under Massachusetts General Laws, Chapter 155, Section 2B".

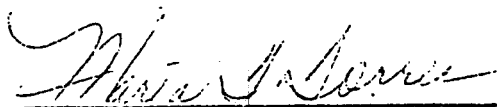
Note: If the space provided under any article or item on this form is insufficient, additions shall be set forth on separate 8 1/2 x 11 sheets of paper leaving a left hand margin of at least 1 inch for binding. Additions to more than one article may be continued on a single sheet so long as each article requiring each such addition is clearly indicated.

9-26-1974

The foregoing amendment will become effective when three articles of amendment are filed in accordance with Chapter 123, Section 7 of the General Laws unless those articles specify, in accordance with the vote adopting the amendment, a later effective date not more than thirty days after such filing, in which event the amendment will become effective on such later date.

IN WITNESS WHEREOF AND UNDER THE PENALTIES OF PERJURY, we have hereto signed our names this

9<sup>th</sup> day of February, in the year 1994



President/ ~~XXXXXX~~



Clerk/ ~~XXXXXXXXXX~~

Christopher Norton

455725

9444/

THE COMMONWEALTH OF MASSACHUSETTS

ARTICLES OF AMENDMENT  
(General Laws, Chapter 130, Section 7)

I hereby approve the within articles of amendment  
and, the filing fee in the amount of \$ 15.00  
having been paid, said articles are deemed to have been  
filed with me this 15th  
day of February, 1994

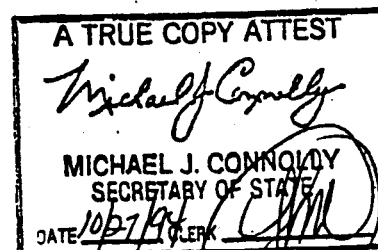
*Michael J. Connolly*  
MICHAEL J. CONNOLLY  
Secretary of State

TO BE FILLED IN BY CORPORATION  
PHOTO COPY OF AMENDMENT TO BE SENT

TO:

..... John J. Slater, III.....  
..... Sherin and Lodgeo.....  
..... 100 Summer Street.....  
..... Boston, MA 02110.....  
Telephone ..... (617) 426-5720.....

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# Massachusetts Department Of Revenue



200 Arlington Street PO Box 7010 Chelsea, MA 02150-7010

ALAN LeBOVIDGE, COMMISSIONER  
LAURIE MCGRATH, ACTING DEPUTY COMMISSIONER

EAST BOSTON COMMUNITY HEALTH  
CENTER CORPORATION  
10 GOVE ST  
E BOSTON, MA 02128

870

Notice 30048  
Exemption  
Number 237 425 849  
Date 12/09/03  
Bureau TSD MGT SERV  
Phone (617) 887-6367

Dear Taxpayer,

A review of our records indicates that the Massachusetts sales/use tax exemption for **EAST BOSTON COMMUNITY HEALTH CENTER CORPORATION**, a tax-exempt 501(c) (3) organization, will expire on **01/04/04**.

The Department of Revenue is issuing this notice in lieu of a new Form ST-2, "Certificate of Exemption". The notice verifies that the Massachusetts Department of Revenue has renewed the sales/use tax exemption for **EAST BOSTON COMMUNITY HEALTH CENTER CORPORATION** subject to the conditions stated in Massachusetts General Laws, Chapter 64H, sections 6(u) or (e), as applicable.

*The organization remains responsible for maintaining its exempt status and for reporting any loss or change of its status to the Department of Revenue. Absent the Department of Revenue's receipt of information from the taxpayer by the expiration date of the current certificate that the entity no longer holds exempt status under the above provisions, the taxpayer's certificate is renewed. This renewal will expire on 01/04/09.*

The taxpayer's existing Form ST-2, in combination with this renewal notice may be presented as evidence of the entity's continuing exempt status. Provided that this requirement is met, all purchases of tangible personal property by the taxpayer are exempt from sales/use taxation under Chapter 64H or I respectively, to the extent that such property is used in the conduct of the purchaser's business.

Any abuse or misuse of this notice by any tax-exempt organization or any unauthorized use by any individual constitutes a serious violation and will lead to revocation. **Willful misuse of this notice is subject to criminal sanctions of up to one year in prison and \$10,000 in fines (\$50,000 for corporations).**

This notice may be reproduced.

Sincerely,

Alan LeBovidge  
Commissioner of Revenue